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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/981,345	10/17/2001	Ali Abdelaziz Alwattari	8586	5497

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EXAMINER

GHALI, ISIS A D

ART UNIT

PAPER NUMBER

1615

DATE MAILED: 03/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/981,345	Applicant(s) ALWATTARI ET AL.	
	Examiner Isis Ghali	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2, 3</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

The receipt is acknowledged of applicants' IDS, filed 9/10/2002, and supplemental IDS, filed 12/23/2002..

Priority

1. An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification or in an application data sheet (37 CFR 1.78(a)(2) and (a)(5)).

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 2-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2-19 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: "the wipe article". Claims 2-19 should say: "The wipe article of claim ---, wherein the --- is ---", because claim 1 is not directed to a substrate as recited by dependent claims 2-13, or substance

Art Unit: 1615

as recited by claims 16-19. Claim 5 is not directed to film as recited by claim 14, and claim 6 is not directed to a porous film as recited by claim 15.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 16 recites the broad recitation medicinal agents, and the claim also recites analgesic agents, which is the narrower statement of the range/limitation. Furthermore, claim 16 recites the broad recitation skin care agents, and the claim also recites suncare agents and antiperspirants, which are the narrower statement of the range/limitation.

Regarding claim 18, the claim recites the substance in the micropockets in the form selected from the group of rigid gel, cream, substance, etc. It is not clear to the examiner as the breadth of the term "substance" and what additional limitation does the term impart.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 1615

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 2, 5-7, 14-16, 18, 20 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,871,607 ('607).

US '607 disclosed a substance delivery system to deliver substance to a target surface when it is deformed; such system comprises a deformable material (substrate) that hold substance in depressions and/or valleys (pockets) (abstract; col.4, lines 22-35). The above structure is used in lotion impregnated facial tissue, scented strips containing perfumes, medicinal patches, and condiment delivery to a surface (col.18, lines 22-27), and that read on the claimed wipe article. The deformable material is nonwoven film material that can be porous or non-porous, permeable or non-permeable (col.4, lines 55-62) and includes polyethylene and polypropylene (col.9, lines 34-40). The substances that held in the depressions are in the form of gel or suspension (col.4, lines 39-41). The height of the depressions (that will be same as the height of the protrusion) is from 0.01 cm to 0.03 cm, i.e. 0.1 to 0.3 mm (col.9, lines 17-18). The width of the depression (that will be the center to center spacing of the protrusions) is from 0.08 cm to 0.15 cm, i.e. 0.8 to 1.5 mm (col.9, lines 8-11). The ratio of height (depth) to width will be from 1:8 till 3:15, and that read on the claimed ratio of at least 1:2, and

Art Unit: 1615

between 0.7:1 and 2.8:1. The reference disclosed deformation of the system can be caused by tensile force applied substantially parallel to the plane of the deformable material (col.5, lines 15-30), and that parallel force reads on the shear force because the shear force means deformation of an elastic body caused by forces that tend to produce an opposite but parallel sliding motion of the body's planes. The reference teaches that the structure comprising depressions containing functional substances and will deliver the substances to the target surface upon contact and forms a continuous pattern (col.7, lines 1-9), and that reads on forming a replica on the target surface.

The limitations of claims 1, 2, 5-7, 14-16, 18, 20 and 22 are met by US '607.

6. Claims 1-3, 5-16, and 18 are rejected under 35 U.S.C. 102(e)(1) as being anticipated by PGPUB 2002/0102392 ('392) that has the effective filing date of Dec. 28, 2000.

PGPUB '392 disclosed a laminate structure formed of first substrate and second substrate that have pockets formed in between the two substrates that contain functional material and are small in size having width to height ratio less than 10 (abstract) and that reads on applicant's ratio 1:2 and 0.7:1 to 2.8:1. The laminate structure used for bandage, dressing, support for one or more parts of the body (page 8, paragraph 0077), and that read on the wipe article disclosed by applicants since dressing as wipes both absorb the body exudates. The substrates are nonwoven webs of polyethylene or polypropylene, or polyvinyl alcohol (page 3, paragraph 0030), and are permeable or impermeable (page 4, paragraph 0036). The substrate further contains

Art Unit: 1615

elastomeric material (page 4, paragraph 0043). The functional material can be particles (solid) or liquid as oil, and includes deodorant, colorant, fragrance, and drugs (page 6, paragraph 0059 and 0060; page 8, paragraph 0077). The height (depth) of the pocket is between about 0.005 to 0.4 inches, i.e. 0.127 to 10 mm (page 8 paragraph 0072). The width of the pockets is calculated by the examiner to be less than 100 mm, i.e. less than 10 times as the depth. The length of the pocket is disclosed by the reference to be between 0.0625 to 2 inches, i.e. 1.5875 to 50 mm (page 8, paragraph 0073). Thus the dimensions of the pocket disclosed by the reference read on the dimensions of the instant claims. Subjecting the substrate to shear force that deform the wall of the pockets and release the functional substance is an intended use and not patentably significant in product claims.

Thus, the limitations of claims 1-3, 5-16 and 18 are met by the PGPUB '392.

7. Claims 1-16, 18, 23 are rejected under 35 U.S.C. 102(e)(2) as being anticipated by US 6,429,350 ('350).

US '350 disclosed an article that can be a wipe such as baby wipe (col.8, lines 29-34; col.10, lines 52-53). The article comprises a liquid permeable layer and a substantially liquid impermeable layer, wherein at least one of the layers includes plurality of pockets (col.2, lines 44-50). The above layers that contain the pockets are nonwoven and are made of polyethylene or polypropylene (col.6, lines 34-45). The pockets have depth of at least 2.5 mm and preferable ranges from 3.8-13 mm, and have width ranging from 5-25 mm (col.4, lines 29-36; col.9, lines 41-55). The ratio of the

Art Unit: 1615

depth to width is calculated by the examiner to be 1:2. The pockets disclosed to be circular or elliptical, and that means the length of the pocket will be at least 5-25 mm. The reference teaches that the pockets are separated apart by distance of 2.5 to 25 mm (col.9, lines 59-61), and since the diameter of the pockets ranges from 5-25 mm, this means 1 cm² will have from 1-100 pockets. Thus, all the dimensions disclosed by the reference read on the claimed dimensions. The pockets can be in more than one layer (col.2, lines 43-50). The pockets contain superabsorbent (read on wettable material claimed by applicants), and the pockets that do not contain the superabsorbent can contain odor absorbent (deodorant), fragrant material, lotion, emollient, and antimicrobials (medicinal agent), (col.5, lines 39-50). The nonwoven webs can further include an elastomer (col.7, lines 14-16). Subjecting the substrate to shear force that deform the wall of the pockets and release the functional substance is an intended use and not patentably significant in product claims.

The limitations of claims 1-16, 18 and 23 are met by US '350.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

Art Unit: 1615

the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over any of US '607 or PGPUB '392 in view of US 6,063,397 ('397).

US '607 teaches a substance delivery system to deliver substance to a target surface when it is deformed, such system comprises a deformable material (substrate) that hold substance in depressions and/or valleys (pockets) (abstract; col.4, lines 22-35). The above structure is used in lotion impregnated facial tissue, scented strips containing perfumes, medicinal patches, and condiment delivery to a surface (col.18, lines 22-27) and that reads on the wipe article disclosed by applicants. The deformable material is nonwoven film material that can be porous or non-porous, permeable or non-permeable (col.4, lines 55-62) and includes polyethylene and polypropylene (col.9, lines 34-40). The substances that held in the depressions are in the form of gel or suspension (col.4, lines 39-41). The height of the depressions (that will be same as the height of the protrusion) is from 0.01 cm to 0.03 cm, i.e. 0.1 to 0.3 mm (col.9, lines 17-18). The width of the depression (that will be the center to center spacing of the protrusions) is from 0.08 cm to 0.15 cm, i.e. 0.8 to 1.5 mm (col.9, lines 8-11). The ratio of height (depth) to

Art Unit: 1615

width will be from 1:8 till 3:15, and that read on the claimed ratio of at least 1:2, and between 0.7:1 and 2.8:1. The reference disclosed deformation of the system can be caused by tensile force applied substantially parallel to the plane of the deformable material (col.5, lines 15-30), and that parallel force reads on the shear force because the shear force means deformation of an elastic body caused by forces that tend to produce an opposite but parallel sliding motion of the body's planes. The reference teaches that the structure comprising depressions containing functional substances and will deliver the substances to the target surface upon contact and forms a continuous pattern (col.7, lines 1-9), and that reads on forming a replica on the target surface.

PGPUB '392 teaches a laminate structure formed of first substrate and second substrate that have pockets formed in between the two substrates that contain functional material and are small in size having width to height ratio less than 10 (abstract) and that reads on applicant's ratio 1:2 and 0.7:1 to 2.8:1. The laminate structure used for bandage, dressing, support for one or more parts of the body (page 8, paragraph 0077), and that read on the wipe article disclosed by applicants since dressing as wipes both absorb the body exudates. The substrates are nonwoven webs of polyethylene or polypropylene, or polyvinyl alcohol (page 3, paragraph 0030), and are permeable or impermeable (page 4, paragraph 0036). The substrate further contains elastomeric material (page 4, paragraph 0043). The functional material can be particles (solid) or liquid as oil, and includes deodorant, colorant, fragrance, and drugs (page 6, paragraph 0059 and 0060; page 8, paragraph 0077). The height (depth) of the pocket is between about 0.005 to 0.4 inches, i.e. 0.127 to 10 mm (page 8 paragraph 0072). The

Art Unit: 1615

width of the pocket is calculated by the examiner to be less than 100 mm, i.e. less than 10 times as the depth. The length of the pocket is disclosed by the reference to be between 0.0625 to 2 inches, i.e. 1.5875 to 50 mm (page 8, paragraph 0073). Thus the dimensions of the pocket disclosed by the reference read on the dimensions of the instant claims.

Both of US '607 and PGPUB '392 do not teach the substance included in the pocket to be cleansing agent and conditioning agent at the same time, or anti-wrinkle agents.

US '397 teaches a substrate of nonwoven material made of polyethylene or polypropylene that delivers cleansing agent and conditioning agent at the same time as well as an active agent such as anti-wrinkle agents (abstract; col.2, lines 59-67; col.5, lines 49-62; col.17, line 59). The substrate of the reference increases the cleansing and exfoliation, and optimizes delivery of the conditioning ingredient, and meanwhile is useful for delivering active ingredients to the skin during the cleansing process (col.2, lines 20-34).

Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to replace the functional substance in the pockets of the article disclosed by US '607 or PGPUB '392 by the cleansing agent and the conditioning agent or anti-wrinkle agent applied by the substrate disclosed by US '397, motivated by the teaching of the US '397 that the substrate of the reference increases the cleansing and exfoliation, and optimizes delivery of the conditioning ingredient at the same time, and meanwhile is useful for delivering active ingredients to the skin during the cleansing

Art Unit: 1615

process , with reasonable expectation of success of providing wipe having pockets to deliver cleansing and conditioning agents or anti-wrinkle agent to the skin of the person on need in one single step.

11. Claims 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over US '350 in view of US 6,280,757 ('757).

US '350 teaches an article that can be a wipe such as baby wipe (col.8, lines 29-34; col.10, lines 52-53). The article comprises a liquid permeable layer and a substantially liquid impermeable layer, wherein at least one of the layers includes plurality of pockets (col.2, lines 44-50). The above layers that contain the pockets are nonwoven and are made of polyethylene or polypropylene (col.6, lines 34-45). The pockets have depth of at least 2.5 mm and preferable ranges from 3.8-13 mm, and have width ranging from 5-25 mm (col.4, lines 29-36; col.9, lines 41-55). The ratio of the depth to width is calculated by the examiner to be 1:2. The pockets disclosed to be circular or elliptical, and that means the length of the pocket will be at least 5-25 mm. The reference teaches that the pockets are separated apart by distance of 2.5 to 25 mm (col.9, lines 59-61), and since the diameter of the pockets ranges from 5-25 mm, this means 1 cm² will have from 1-100 pockets. Thus, all the dimensions disclosed by the reference read on the claimed dimensions. The pockets can be in more than one layer (col.2, lines 43-50). The pockets contain superabsorbent (read on wettable material claimed by applicants), and the pockets that do not contain the superabsorbent can contain odor absorbent (deodorant), fragrant material, lotion, emollient, and

Art Unit: 1615

antimicrobials (medicinal agent), (col.5, lines 39-50). The nonwoven webs can further include an elastomer (col.7, lines 14-16).

The reference does not teach providing cleansing and conditioning agents from two different layers of the same article.

US '757 teaches an article comprising apertured substrate of nonwoven material such as polyvinyl alcohol, polyethylene, or polypropylene comprising first and second layers that are bonded in some regions and unbonded in other regions, i.e. form pockets (abstract; col.2, lines 40-52; col.4, lines 45-50; col.5, lines 18, 39, 47; col.39, lines 46-50). The article used to deliver surfactant (cleansing agent) and conditioning agent when rubbed against the skin (col.2, lines 25-29; col.4, lines 58-65). One layer can be treated with the surfactant and the other can be treated with the conditioning agent (col.3, lines 61-66).

Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to use the wipe of US '350 that can deliver more than one agent to deliver cleansing agent and conditioning agent in different layer as taught by US '757, motivated by the teaching of US '757 that the article comprising both agents provides both functions of cleansing and conditioning in a single use, with reasonable expectation of success of the delivered wipe to deliver more than one beneficial agent to the skin as the cleansing and conditioning agent by simply rubbing single wipe against the skin of the user.

Art Unit: 1615

12. Claims 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over US '607 in view of PGPUB 2002/0092199 ('199).

US '607 teaches a substance delivery system to deliver substance to a target surface when it is deformed, such system comprises a deformable material (substrate) that hold substance in depressions and/or valleys (pockets) (abstract; col.4, lines 22-35). The deformable material is nonwoven film material that can be porous or non-porous, permeable or non-permeable (col.4, lines 55-62) and includes polyethylene and polypropylene (col.9, lines 34-40). The substances that held in the depressions are in the form of gel or suspension (col.4, lines 39-41). The above structure is used in lotion impregnated facial tissue, scented strips containing perfumes, medicinal patches, and condiment delivery to a surface (col.18, lines 22-27). The height of the depressions (that will be same as the height of the protrusion) is from 0.01 cm to 0.03 cm, i.e. 0.1 to 0.3 mm (col.9, lines 17-18). The width of the depression (that will be the center to center spacing of the protrusions) is from 0.08 cm to 0.15 cm, i.e. 0.8 to 1.5 mm (col.9, lines 8-11). The ratio of height (depth) to width will be from 1:8 till 3:15, and that read on the claimed ratio of at least 1:2, and between 0.7:1 and 2.8:1. The reference disclosed deformation of the system can be caused by tensile force applied substantially parallel to the plane of the deformable material (col.5, lines 15-30), and that parallel force reads on the shear force because the shear force means, as per "THE WEBSTER DICTIONARY II" cited for interest, deformation of an elastic body caused by forces that tend to produce an opposite but parallel sliding motion of the body's planes. The reference teaches that the structure comprising depressions containing functional

Art Unit: 1615

substances and will deliver the substances to the target surface upon contact and forms a continuous pattern (col.7, lines 1-9), and that reads on forming a replica on the target surface.

US '607 does not teach the substrate as clothing insert, a shoe insole or as a panty liner.

PGPUB '199 teaches a shoe liner comprising first substrate and second substrate of nonwoven webs and comprising pockets containing functional material in the form of liquid that include odor absorbent, fragrance and germicidal material (abstract; page 1, paragraph 003; page 2, paragraph 0024; page 5, paragraph 0049). The substrate is nonwoven web of polyvinyl alcohol, polyethylene, or polypropylene (page 3, paragraph 0027), and can be permeable or impermeable to liquid (page 3, paragraph 0032).

Accordingly, it would have been obvious to one having ordinary skill in the art at the time of the invention to apply functional substance to a target surface by applying tensile force on the structure disclosed by US '607 and use it as a shoe liner as disclosed of PGPUB '199 motivated by the teaching of PGPUB '199 that pockets provide comfort to the foot as well as allow the shoe liner to maintain the functionality of the included functional material over an extended period of time, with reasonable expectation of success of the delivered method to provide functional materials to the sole of the user from shoe insole.

Art Unit: 1615

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isis Ghali whose telephone number is (703) 305-4048. The examiner can normally be reached on Monday through Thursday from 7:00 AM to 5:30 PM, Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page, can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Isis Ghali
Examiner
Art Unit 1615

Isis Ghali